



**THE ATTORNEY GENERAL  
OF TEXAS**

GERALD C. MANN

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Hill D. Hudson  
District Attorney  
109th Judicial District  
Pecos, Texas

Dear Sir:

Opinion No. O-3056

Re: County Health Officer must  
reside in county.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"I have been asked by the Commissioners' Court of Loving County to request an opinion from your office on the following two matters.

"In the first place, Loving County is a county of very limited population and having no resident licensed physician within its boundaries. Evidently they have some need of a county health officer and have sought to make Dr. W. D. Black of Ward County, Texas, county health officer and to pay him as such. They are not sure that payment to him would be legal since he does not reside within the county. I can find no decision wherein this question has been settled. Article 4423 of the Revised Civil Statutes of 1925 places no limitation as to residence.

"The first question they desire your opinion on is: Can Loving County legally pay a county health officer who performs the duties of such office, when that officer is not a resident of Loving County?"

Section 14 of Article 16, Texas Constitution, reads as follows:

"Sec. 14. All civil officers shall reside within the State; and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to

comply with this condition shall vacate th office  
so held."

Article 2928, Vernon's Annotated Texas Civil Statutes of Texas,  
reads in part as follows:

"Neither the Secretary of State, nor any county  
judge of this State, nor any other authority authorized  
to issue certificates, shall issue any certificates  
of election or appointment to any person elected or  
appointed to any office in this State, who is not  
eligible to hold such office under the Constitution of  
this State....."

Article 4423, Vernon's Annotated Texas Civil Statutes, reads  
as follows:

"The commissioners court by a majority vote in each  
organized county shall biennially appoint a proper  
person for the office of county health officer for  
his county, who shall hold office for two years. Said  
county health officer shall take and subscribe to the  
official oath, and shall file a copy of such oath and  
a copy of his appointment with the Texas State Board of  
Health; and, until such copies are so filed, said  
officer shall not be deemed legally qualified.  
Compensation of said county health officer shall be  
fixed by the commissioners court; provided, that no  
compensation or salary shall be allowed except for  
services actually rendered." (Underscoring ours).

Article 2351, Vernon's Annotated Texas Civil Statutes reads  
in part as follows:

"Each commissioners court shall:

". . . .

"11. Provide for the support of paupers and such  
idiots and lunatics as cannot be admitted into the  
lunatic asylum, residents of their county, who are  
unable to support themselves. By the term resident as  
used herein, is meant a person who has been a bona  
fide inhabitant of the county not less than six  
months and of the State not less than one year."

Article 4418f, Vernon's Annotated Texas Civil Statutes of  
Texas, reads as follows:

"It shall be lawful for the State Department of Health to accept donations and contributions, to be expended in the interest of the public health and the enforcement of public health laws. The Commissioners Court of any County shall have the authority to appropriate and expend money from the general revenues of its County for and in behalf of public health and sanitation within its County." (Underscoring ours)

We think that a county health officer is clearly a county officer and subject to the provisions of Section 14 of Article 16 of our State Constitution. It is our further opinion that the Commissioners' Court has no authority to appoint a non-resident doctor to the office of County Health Officer.

However, we wish to point out that the Commissioners' Court has broad powers with respect to the aid of resident paupers, lunatics and idiots under subdivision 11 of Article 2351, supra, and also has broad powers with respect to the expenditure of general revenue funds of the county for and in behalf of the public health and sanitation within the county. Since Loving County does not have a resident physician within the county there could be no legally appointed de jure county health officer for said county; however, we think the Commissioners' court of Loving County would have authority to employ a non-resident physician (without appointing him County Health Officer) to give medical treatment to resident paupers, lunatics and idiots within the statute and could also employ him to perform various services they deemed necessary for and in behalf of public health and sanitation within their county, and could pay said physican for such services out of the general revenue funds of the county.

Very truly yours

ATTORNEY GENERAL OF TEXAS

WJF:AW/cge

By s/ Wm. J. Fanning

APPROVED FEBRUARY 3, 1941  
s/ Grover Sellers  
FIRST ASSISTANT  
ATTORNEY GENERAL

Wm. J. Fanning  
Assistant

APPROVED OPINION COMMITTEE  
By BWB, Chairman